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Supreme Court, U.S.
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No. (1)

In The

Supreme Court of the United States

Michael L. Stewart

Petitioner

v.

Kimberly Childers,
In her official capacity

Respondent

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented For Review

1. Does a federal court have subject matter jurisdiction over a 1983 action founded on an allegation that a rural state judge consciously favored local residents by fraudulently conducting a bench trial in the guise of a summary judgment proceeding in violation of Section Seven of the Kentucky Constitution?

2. Did the federal courts' persistent misrepresentation of the pro se cause of action as an alleged injury inflicted by a judgment instead of an alleged injury inflicted by the actions of a judge constitute a denial of procedural due process?

3. Do the Younger Doctrine and Rule 12(b) require a federal court to address and respond to arguments and evidence presented in support of an allegation that a state judge consciously favored local residents by fraudulently conducting a bench trial in the guise of a summary judgment proceeding in violation of Section Seven of the Kentucky Constitution?

4. Did the federal courts' refusal to address and respond to arguments and evidence presented in support of an allegation that a state judge consciously favored local residents by fraudulently conducting a bench trial in the guise of a summary judgment proceeding in violation of Section Seven of the Kentucky Constitution constitute a denial of procedural due process?

Jurisdiction

Statutes

The court has subject matter jurisdiction over this matter pursuant to Title 42 U.S.C. 1983, Title 28 U.S.C. Sections 1331 and 1343, and supplemental jurisdiction over state constitutional violations pursuant to Title 28 U.S.C. Section 1367.

Timely

1. Judgment of Court of Appeals Entered 8 November, 2007.

2. Petition for En Banc Review Denied 19 February, 2008

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1. Statement of the Case

I initiated a pro se 1983 action founded on an allegation that Kimberly Childers, a circuit judge sitting in notorious Knott County, Kentucky, inflicted a civil rights injury by consciously favoring local defendants in a will contest. It is accepted that such favoritism occurs in proceedings conducted in rural courts. I alleged that Kimberly Childers in effect accepted the defendants' invitation to conduct a bench trial in the guise of a summary judgment proceeding, which violated guarantees of due process of law and equal protection of the law, as well as Section Seven of the Kentucky Constitution, which protects the right to trial by jury. (Kentucky's CR 56.03, the Kentucky summary judgment rule, severely restricts a judge's conduct: the distinction between a proper response to a genuine motion for a summary judgment and an illegitimate bench trial is clear and obvious.) I alleged and argued that the defendants' motion for a summary judgment was not in fact a motion for a summary judgment; that the judgment was not a summary judgment (a set-up); and that the content of the "summary judgment" was in fact evidence that Kimberly Childers had conducted an unconstitutional bench trial. The absurd "summary judgment" begins by stating a number of "Findings of Fact" and concludes "There are no material facts in dispute," thus providing evidence of an unconstitutional "bench trial." (Appendix, p.66.) Suppose a judge enters a judgment that states falsely that a "movant" has shown that the evidence of record contains no jury issues. If an

accuser can establish scienter, then the accuser has established that the judge perpetrated a fraud. Fraud is perpetrated by a "misrepresentor," not by his misrepresentation. It is customary to respond to judicial misconduct by appealing a judgment as "merely" legally erroneous, but this is inimical to the public interest. I initiated the civil rights action after such an appeal of the "summary judgment" had been duly initiated and before the judgment was reversed -- the Kentucky personal injury deadline is one year. Federal courts, however, persistently mischaracterized the clearly stated civil rights cause of action, ignored my dogged attempts to correct this mischaracterization, and improperly invoked the Rooker-Feldman and Younger Doctrines in order to justify dismissing the action.

First Question. The civil rights complaint clearly identifies the cause of action as an injury inflicted by the misconduct of a judge, not as an injury inflicted by an unconstitutional or legally erroneous judgment. I have added quotes in brackets around the phrase "summary judgment" in the following excerpts from the preliminary statement of the complaint.

"...1.2. This complaint asserts that Kimberly Childers entered a ["]summary judgment["] in violation of Michael Stewart's right to due process of law and equal protection of the law as these rights have been explicated by the Supreme Court of the United States of America. The Constitution of the Commonwealth of Kentucky also guarantees rights of due process of law and

equal protection of the law (Sections 2, 3, and 14), as well as a right to trial by jury (Section 7)."(Appendix , p. 71)

The District Court judge cites Section 1.2. of the complaint:

"Plaintiff Michael L. Stewart ("Stewart") filed this action pursuant to 42 U.S.C. § 1983 against Circuit Judge Kimberly Childers in her official capacity alleging that Judge Childers's *entry of summary judgment* against him in a probate proceeding violated his constitutional rights to due process, equal protection under the law, and to *a jury trial.* Complaint at ¶1.2." (Appendix, p. 53).

My emphasis. A crooked judge could rule falsely that a motion for summary judgment had succeeded in establishing the absence of jury issues. This would violate the guarantee right to trial by jury. The fraud would be perpetrated by the judge, not by the judgment. A fraud is perpetrated by the "misrepresentor." Continuing:

"1.3. Michael Stewart asks the court to declare that Kimberly Childers' *judicial action* violated his right to a "fair trial in a fair tribunal," his right to a "meaningful (evidentiary) hearing," his right to a hearing by a "disinterested" judge, and his right to a proceeding that presents the "appearance" of fairness, as well as rights guaranteed by the Bill of Rights of the Constitution of the Commonwealth of Kentucky. Michael Stewart further asserts that Kimberly Childers' conduct "shocks" the "conscience" as well as the "sense of fair play." The

quoted words and phrases are reproduced from familiar opinions issued by the Supreme Court of the United States of America.

1.4. A biased proceeding cannot be "cured" (made constitutional) by a subsequent fair proceeding, e.g., an appeal..."

...1.7 This complaint does not assert that the Kentucky law of summary judgment fails to satisfy constitutional requirements; nor does it ask a federal court to review a state court's interpretation of state law.

1.8. This complaint is prompted by yet another instance of official misconduct in Knott County, Kentucky. This fact provides some obvious justification for seeking relief in Federal Court.

1.9. Kimberly Childers' entry of ["]summary judgment["] was clearly and obviously contrary to Kentucky law. An unlawful summary judgment issued by a state judge may be correctly explained as a consequence of an incorrect interpretation of state law. Relief from such a judgment is pursued by filing an appeal in the state courts -- unless the judgment also constitutes a violation of a constitutional requirement, in which case it is void. (An appeal has been filed.) An unlawful ["]summary judgment["] may sometimes be correctly explained, however, as a consequence of bias, bad faith, or interest. Such a judgment violates Fourteenth Amendment requirements for due process of law and (in some cases) equal protection of the law, and relief

should be sought in a manner and venue suitable for such a cause of action..." (Appendix, 73).

Skipping to the end of the complaint:

"5. Cause of Action

Michael Stewart asserts that Kimberly Childers acted in bad faith...Kimberly Childers' misconduct thus violated rights guaranteed to Michael Stewart by the Fourteenth Amendment of the Constitution of the United States of America as well as rights guaranteed by Sections 2, 3, 7, and 14 of the Constitution of the Commonwealth of Kentucky. Such misconduct by a state judge establishes a cause of action pursuant to 42 U.S.C. Section 1983." (Appendix, 75).

It seems to me that this paragraph is clear and that the last sentence is correct. It alleges a civil rights injury inflicted by the misconduct of a judge. Suppose (again) that a judge enters a judgment that states falsely that a "movant" has shown that the evidence of record contains no jury issues. If an accuser can establish scienter, then he can establish that the judge perpetrated a fraud. Fraud is perpetrated by a "misrepresentor," not by his misrepresentation. Finally:

"6. Request for Relief

Wherefore,

Michael Stewart requests that this Court

1. declare that Kimberly Childers' *entry of["] summary judgment*["] [her *action*] violated his constitutionally guaranteed rights, including his rights to due process of law and equal protection of the law, which are guaranteed by the Constitutions of the Unites States of America and the Commonwealth of Kentucky, as well as the *right to trial by jury*, which is guaranteed by the Constitution of the Commonwealth of Kentucky..." (Appendix, p. 75).

Emphasis and quotes added. It seems clear to me that this is a request for a declaration that Kimberly Childers misbehaved; it is not a request for a declaration that a judgment misbehaved. The (false) *content* of the "summary judgment" constitutes *evidence* that she "tried' the case, a constitutional violation. A judge can violate the right to a trial by jury by entering a fraudulent "summary judgment"; the judgment is an instrument, not the perpetrator, of the violation. The District Court judge quotes from this "prayer":

"In the prayer for relief in his complaint, Stewart asks this Court to

'declare that Kimberly Childers' [false] entry of summary judgment [her action!] violated his constitutionally guaranteed rights, including his rights to due process of law and equal protection of the law, ... as well as his right to trial by jury, ...

Complaint at page 10. The defendant is precisely correct when she asserts that this is a 'textbook'

case for application of the Rooker-Feldman Doctrine." (Appendix, p. 56).

The excerpts from the complaint reveal that both the defendant and the district judge are "precisely" and inexplicably in error. A Kentucky judge who knowingly entered a false statement that a "movant" had established that the record contained no jury issues would perpetrate a violation of Section Seven of the Kentucky Constitution as well as other constitutional guarantees.

If the clearly and repeatedly stated civil rights cause of action is not perversely misunderstood, it is clear from Supreme Court rulings that a federal court has subject matter jurisdiction. Indeed, the Sixth Circuit Court of Appeals itself has recognized this obvious fact in at least two opinions (Section 2.1, below).

Second Question. A court must attempt to recognize a genuine cause of action when there is one. Courts that conflate an allegation that an injury was inflicted by misconduct of a judge with a fictional allegation that an injury was inflicted by a judgment create an appearance that they are shielding a judge from a civil rights action. A court that creates an *appearance* of partiality and injustice fails to satisfy requirements for due process.

Third Question. The Sixth Circuit's dismissal seems to suppose erroneously that the Younger Doctrine requires abstention from <u>addressing</u> an allegation

that a state judge misbehaved. A state judge who conducts a proceeding that violates Section Seven acts under color of state law but does not conduct an "official" state proceeding (cf. the justification for the Young Doctrine. Ex parte Young, 209 U.S. 123 (1908)). Such a proceeding could not be said to serve an "important," or, indeed, any "state interest." It is not possible to apply the three prongs of the Younger test correctly without evaluating the evidence for such an allegation: no state proceeding, no state interest, no constitutional forum. The customary appeal of the "judgment" founded only on a claim of legal error is inimical to the public (state) interest. This case provides an opportunity to clarify the criteria that determine the application of the Younger Doctrine

Fourth Question. In fact, the Younger Doctrine and F.R.C.P. 12(b) taken together *require* a federal judge to address and evaluate evidence and argument submitted in support of a factual allegation that a state judge perpetrated a fraud on the court that also constituted a violation of a state constitutional guarantee. The federal courts' refusal to address and respond to the argument and evidence that I presented constituted a second due process violation.

Claim. The following exposition establishes that the lower federal courts did not make an acceptable effort to identify the alleged source of injury and apply the two doctrines correctly. Indeed, the Sixth Circuit panel repeated the District Court's *factual* errors. The courts' behavior creates an

appearance of partiality which would tend to undermine public confidence in the courts. The courts' improper dismissal of my civil rights action without addressing the arguments and evidence that I presented conflicted with opinions of the Supreme Court and the Sixth Circuit Court of Appeals, constituted an abuse of discretion as well as a dereliction of duty, created an actuality as well as an appearance of injustice, and failed to satisfy the constitutional requirement for due process of law. I ask this Court to rule accordingly and direct the lower courts to address and respond to the argument and evidence that I presented.

This document is composed primarily of quotations from authorities. My own contributions are modest. This format seems to be necessary because no one listens to me. Perhaps the courts will listen to themselves and each other.

2. First Question. Subject Matter Jurisdiction and Source of the Alleged Injury

The Rooker-Feldman Doctrine prohibits attempts to circumvent the federally mandated appeal sequence. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeal v. Feldman, 460 U.S. 462 (1983) Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005); Lance v. Dennis, 546 U.S. 459 (2006). Sixth Circuit judges ignored my repeated attempts to communicate the obvious fact that a civil rights complaint that alleges that a civil rights injury was inflicted by a state judge's misconduct is not "in

effect" an appeal. If it is by now obvious that a federal court has subject matter jurisdiction, skip to Section 2.5.

2.1. Judicial Misconduct Inflicts Distinct Injury

An allegation that a judge inflicted an injury is distinct from an allegation that a judgment inflicted an injury.

2.1.1. Fraud on the Court

The plaintiff in a recent Sixth Circuit case alleged that fraud had been perpetrated on a state court.

"Brown alleges wrongdoing by the Court of Common Pleas of Montgomery County, Ohio..., Here, Brown's allegations of fraud in connection with the state court proceedings...do not claim that the source of Brown's alleged injury is the foreclosure decree itself...Brown's claim that the mortgage foreclosure decree was procured by fraud is not barred by *Rooker-Feldman*." Brown v. First Nationwide Mortgage Corporation, Southeast Equity Title Corporation, and Homecomings Financial a GMAC Company, 206 Fed. Appx. 436, 2006 WL 3289232 (CA.6. (Ohio), 2006 Fed.App. 025N: Cites McCormick v. Braverman, 451 F. 3d 382 (6th Cir. 2006).

(Unpublished opinion). The opinion demonstrates, that a Sixth Circuit panel could recognize the obvious fact that the alleged fraudulent actions would establish a distinct personal injury cause of action that could be pursued in a federal court.

(Cf. also Schlotthauer v. Sanders, 545 N.Y.S. 196 (A.D. 2.Dept. 1989); Schlotthauer v. Sanders, 545 N.Y.S. 197 (A.D. 2.Dept. 1989))

2.1.2. Due Process Violation Inflicts Distinct Injury

"It is true that '[s]ubmission to a fatally biased decisionmaking process is in itself a *constitutional injury* sufficient to warrant injunctive relief.' United Church of the Medical Center v. Medical Center Comm'n, 689 F.2d 693, 701 (7th Cir.1982). The injury is the submission itself; the biased (or potentially biased) decision may also result in injury, but it is a separate, distinct one. Ibid. The administrative process "requires the *appearance of fairness and the absence of a probability of outside influences on the adjudicator; it does not require proof of actual partiality*." Utica Packing Co. v. Block, 781 F.2d 71, 77 (6th Cir.1986)." Hammond v. Baldwin, 866 F. 2d 172 (6th Cir. 1989).

My emphasis. This opinion exhibits knowledge of due process requirements (Cf. Section 2.5.1 below)

"Wrongdoing" by the judge of the Court of Common Pleas of Montgomery County would violate constitutional guarantees of due process and (in some cases) equal protection, inflicting a "constitutional injury." This would establish a personal civil rights injury cause of action.

The two Sixth Circuit opinions are consistent with a Supreme Court decision that they do not cite

(Carey v. Piphus, 435 U.S. 247 (1978); section 2.2.2, below).

2.2. 1983: Personal Civil Rights Injury Action

The Sixth Circuit opinions recognized that fraud perpetrated by a state judge would establish a personal civil rights injury cause of action that could be presented to a federal court.

2.2.1. Personal Injury Action

A 1983 action is a personal injury action.

"(c)... The characterization of all 1983 actions as involving claims for personal injuries minimizes the risk that the choice of a state statute of limitations would not fairly serve the federal interests vindicated by 1983. Pp. 276-279." Wilson v. Garcia, 471 U.S. 261 (1985).

Kentucky and Federal law preserve a means for an attack in equity on a judgment tainted by judicial misconduct. (Section 2.4 below). An appeal that alleges only "mere" legal error is customary and favorable to the interest of the lawyer and the judge but inimical to the public interest.

2.2.2. Procedural Due Process Injury: Nominal Damages

A party who is denied procedural due process during a proceeding is entitled to vindication, at least "nominal" damages, and a constitutionally adequate proceeding, whether or not the ruling

that results from an inadequate proceeding is legally correct or constitutionally acceptable i.e., the ruling is not the source of this procedural due process injury. Carey v. Piphus, supra; Farrar v. Hobby, 506 U.S. 103 (1992). If a judge is responsible for biasing a proceeding, then an injured party cannot demand the dollar, but he is entitled to vindication and a do-over.

2.3. 18 U.S.C. 242 Is the "Criminal Analog" of 42 U.S.C. 1983

18 U.S.C. Section 242 is the "criminal analog" of 42 U.S.C. Section 1983. It follows that 42 U.S.C. Section 1983 is the civil analog of 18 U.S.C. Section 242

"Even judges...could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. 242, the criminal analog of 1983." Imbler v. Pachtman, 424 U.S. 409 (1976). (Citations omitted.)

It seems reasonable to infer that Congress intended that a federal court that has jurisdiction over a criminal prosecution pursuant to 242, e.g., a bribery prosecution, should have subject matter jurisdiction over a civil action pursuant to 1983 that is founded on the same alleged judicial misconduct. From 1983:

"... in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

I alleged injury from fraudulent and unconstitutional acts committed by a judicial officer acting in her official capacity. A federal court has subject matter jurisdiction.

2.4 Equitable Remedy Distinct From Appeal

Congress and the Kentucky legislature have preserved means for obtaining equitable relief from judgments tainted by judicial misconduct: Kentucky's CR 60.02 and CR 60.03, Federal Rule 60(b). An independent action in equity pursuant to CR 60.03 is distinct from an appeal. Section 3.4.4. below investigates this topic. A judge who misbehaves may inflict a personal injury (action at law); his action may eventuate in a void judgment (action in equity).

2.5. Third Question. Denial of Due Process: Refusal to Recognize Cause of Action

The Supreme Court, the Sixth Circuit Court of Appeals, the Congress, and the Kentucky Legislature that enacted CR 60.02 and CR 60.03 seem to be in agreement that an action that alleges that an injury was inflicted by a state judge's misconduct is distinct from an appeal. Furthermore, the first three agents seem to be in agreement that a federal court has subject matter jurisdiction.

2.5.1. Justice Must Satisfy the Appearance of Justice

The courts' refusal to recognize the obvious fact that an allegation that an injury was inflicted by judge differs from an allegation that an injury was inflicted by a judgment creates an appearance of partiality. Cf. Hammond v. Baldwin, supra, Section 2.1.2, above.

'The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the *promotion of participation and dialogue by affected individuals* in the decisionmaking process. See Carey v. Piphus, 435 U.S. 247, 259 - 262, 266-267 (1978). The neutrality requirement ...preserves both *the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done,'* Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case *with assurance that the arbiter is not predisposed to find against him.*

...Indeed, *'justice must satisfy the appearance of justice,'* Offutt v. United States, 348 U.S. 11, 14 (1954), and this *'stringent rule* may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of

justice equally between contending parties,' In re Murchison, 349 U.S. 133, 136 (1955). See also Taylor v. Hayes, 418 U.S. 488 (1974)." Marshall v. Jerrico, 446 U.S. 238 (1980).

My emphasis. Judges should strive to avoid creating an appearance that they are shielding a crooked judge.

2.5.2. Duty to Try to Recognize the Cause of Action

A little help from the Fourth Circuit:

"It is now established doctrine that pleadings should not be scrutinized with such technical nicety that a meritorious claim should be defeated, and even if the claim is insufficient in substance, it may be amended to achieve justice. Rice v. Olson, 324 U.S. 786, 791-92, 65 S.Ct. 989, 89 L.Ed. 1367 (1945); Holiday v. Johnston, 313 U.S. 342, 350, 61 S.Ct. 1015, 85 L.Ed. 1392 (1941). In one of the latest expressions on the subject, Haines v. Kerner, 404 U.S. 519, 521, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), it was said that a complaint, especially a pro se complaint, should not be dismissed summarily unless 'it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief,' ' quoting from Conley v. Gibson, 355 U.S. 41,, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)." Gordon v. Leeke, 574 F. 2d. 1147 (4th Cir. 1978).

The courts' refusal to recognize my repeated attempts to state the civil rights cause of action

was not a consequence of excessive "technical nicety."

A little help from the Supreme Court:

"Against this backdrop, we now consider whether respondent's complaint states a cognizable § 1983 claim. The handwritten pro se document is to be liberally construed. As the Court unanimously held in Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), a pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears ' 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " Id., at 520-521, 92 S.Ct. at 596, quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)." Estelle v. Gamble, 429 U.S. 97 (1976).

These quotations imply that the courts may not misconstrue my stated cause of action in order to exclude the action from their jurisdiction.

2.5.3. Hearing Not "Meaningful" and "Appropriate"

The courts' persistent misrepresentation of the cause of action is *evidence* of failure to provide a "meaningful hearing appropriate to the nature of the case."

'The hearing required by the Due Process Clause must be 'meaningful,' Armstrong v. Manzo, 380 U.S. 545, 552 (1965), and 'appropriate to the nature of

the case'." Mullane v. Central Hanover Bank & Trust Co., supra [339 U.S. 306 (1950)], at 313." Bell v. Burson, 402 U.S. 535 (1971).

2.5.4. Denial of Due Process: Misrepresentation of Cause of Action

A court that refuses to recognize the obvious difference between an allegation that an injury was inflicted by a judge and an allegation that an injury was inflicted by a judgment creates an appearance of partiality and fails to provide due process.

3. Third Question. Conditions for Refusal to Provide Authorized Equitable Relief

The Younger Doctrine requires a federal court to deny relief if the plaintiff is unable to show an "exceptional circumstance" and circumstances satisfy a three-pronged test. My misconduct allegation implies that the initial proceeding was not a state proceeding and it served no state interest. A federal court must address the argument and evidence that I present. If this is obvious, skip to Section 3.4.3.1. The customary response to such judicial misconduct is an appeal that argues only "mere" legal error: such a response to judicial misconduct is inimical to the public (and state) interest.

A federal court must refuse to provide congressionally authorized relief when certain conditions are satisfied.

3.1. No Authority to Abstain from Exercising Jurisdiction

Congress determines the scope of jurisdiction; federal courts are duty-bound to adjudicate.

3.1.1. Congress Defines the Scope of Federal Jurisdiction

"Our cases have long supported the proposition that federal courts lack the authority to abstain from the exercise of jurisdiction that has been conferred. For example: 'We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.' Cohens v. Virginia, 6 Wheat. 264, 404 (1821). `[T]he courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.' Chicot County v. Sherwood, 148 U.S. 529, 534 (1893) (citations omitted). 'When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction . . .The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied.' Willcox v. Consolidated Gas Co., 212 U.S. 19, 40 (1909) (citations omitted). Underlying these assertions is the undisputed constitutional principle that Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds. Kline v. Burke

Construction Co., 260 U.S. 226, 234 (1922)." New Orleans Pub. Serv., Inc. v. New Orleans, 491 U.S. 350 (1989).

3.1.2. Duty to Adjudicate

"As recently as last Term we described the federal courts' obligation to adjudicate claims within their jurisdiction as `virtually unflagging.' Deakins v. Monaghan, 484 U.S. 193, 203 (1988) (citation omitted)." New Orleans Pub. Serv., Inc. v. New Orleans, supra.

Not my experience.

3.2. Congressional Remedy for Judicial Misconduct in State Court Proceedings

Justice Marshall identified "three recurring themes" in the debate over 1 of the Civil Rights Act of 1871, the precursor to 1983. Patsy v. Florida Board of Regents, 457 U.S. 496 (1982). My civil rights action alleges a kind of injury that motivated some members of Congress to enact the Civil Rights Act.

3.2.1. Federal Remedy For Misconduct in State Court Proceedings

A theme:

'This Congress believed that federal courts would be less susceptible to local prejudice and to the existing defects in the factfinding process of the state courts." Patsy v. Florida Board of Regents, supra.

"Those who opposed the Act of 1871 clearly recognized that the proponents were extending federal power in an attempt to remedy the state courts' failure to secure federal rights." Mitchum v. Foster, 407 U.S. 225 (1972).

"This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights ... it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts." Mitchum v. Foster, supra.

3.2.2. Choice of Forum

Another theme:

"... many legislators interpreted the bill to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief." Patsy v. Florida Board of Regents, supra.

The Supreme Court has chosen to eliminate this choice when certain circumstances are present and others are not.

3.2.3. Federal Duty to Prevent Judicial Violations of Rights

One more theme:

"...Congress assigned to the federal courts a paramount role in protecting constitutional rights. Patsy v. Florida Board of Regents, supra.

"As we recognized in Mitchum v. Foster, 407 U.S. 225, 242 (1972) (quoting Ex parte Virginia, 100 U.S. 339, 346 (1880)), '[t]he very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - to protect the people from unconstitutional action under color of state law, `whether that action be executive, legislative, or judicial.'" Patsy v. Florida Board of Regents, supra.

Misconduct in state courts was a primary motivation for the enactment of the Civil Rights Act of 1871. My complaint alleges a variety of abuse that prompted legislators to act. I asserted in presentations to the district court that questions of federalism (and comity) *as they relate to my civil rights action* were debated and settled in 1871.

3.3. Federal Abstention from Criminal and Civil Actions

Congress has incorporated some "abstention" into 1983. The Justice Department has chosen to abstain from almost all criminal prosecutions authorized by 242.

3.3.1. 18 U.S.C. Section 242: Justice Department Chooses to Abstain

242 is the "criminal analog" of i983. Some repetition:

" This Court has never suggested that the policy considerations which compel civil immunity for certain governmental officials also place them beyond the reach of the criminal law. Even judges ... could be punished criminally for willful deprivations of constitutional rights on the strength of 18 U.S.C. 242, the criminal analog of 1983." Imbler v. Pachtman, supra. (Citations omitted."

The notion that such "policy considerations" do not leave the public "powerless to deter misconduct" is a fantasy. The public is in reality very rarely empowered to deter or punish misconduct: in the period FY 1986 -- FY 2003, the Justice Department declined 98.4 % of 242 cases referred by *investigative agencies* (not by the *public*)! *Investigative agencies* referred of 43,331 cases and 42,641 were declined. TRAC Reports, Inc. 2004; Transactional Records Access Clearinghouse. Let us, however, pursue this fantasy briefly. A judge who consciously favors one party to a proceeding over another violates 242. Excerpt from Sample Jury Instructions:

"As noted before, it is not necessary for you to find that the defendants were thinking in constitutional or legal terms at the time of the incidents, because a *reckless disregard* for a person's constitutional rights is *evidence* of a

specific intent to deprive that person of those rights. You may find that a defendant acted with the requisite *specific intent* even if you find that he had no real familiarity with the Constitution or with the particular constitutional right involved, provided that you find that the defendant *willfully and consciously did the act* which deprived the victim of his or her constitutional rights. ...If you find that *the defendant knew what he was doing and that he intended the consequences of his act*, and if you find that that result constituted a deprivation of a constitutional right, then you may conclude that the defendant acted with the *specific intent to deprive the victim of that constitutional right.* " United States Attorney's Manual, Title 8, Civil Rights Resource Manual, 134 Sample Jury Instructions, 18 U.S.C. Section 242.

My emphasis. A judge might be inferred to have some familiarity with constitutional guarantees of due process of law and equal protection of the law. Consequently, these confusing jury instructions should be less difficult to apply when an accused person is a judge. A judge who acts with conscious favoritism clearly satisfies the criterion for "willfulness," i.e., he acted with "specific intent."

3.3.2. 42 U.S.C. Section 1983: Congressionally Mandated Abstention

1983 is the "civil analog" of 242:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

The statute mandates "abstention" from providing one kind of relief in certain circumstances:

"...in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

The modification to the statute seems to imply the extent of abstention that Congress intended.

("3. Since 1979 does not contain the word "willfully," as does 18 U.S.C. 242, and 1979 imposes civil liability rather than criminal sanctions, actions under 1979 can dispense with the requirement of showing a "specific intent to deprive a person of a federal right." Monroe v. Pape, 365 U.S. 167 (1961)).

The current version of 1988, on the other hand, establishes judicial immunity from costs as well as damages, which restricts the practical applicability of 1983:

"...in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held

liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction."

A Kentucky judge who conducts an unconstitutional proceeding exceeds his authority.

"The common-law absolute immunity of judges for 'acts committed within their judicial jurisdiction,' see Bradley v. Fisher, 13 Wall. 335 (1872), was found to be preserved under1983 in Pierson v. Ray, 386 U.S. 547, 554 -555 (1967)." Imbler v. Pachtman, supra.

Both 242 and 1983 attempt to provide an opportunity to seek justice in a federal court for injuries inflicted by misconduct of state judges. It appears, however, that U.S. Attorneys have chosen to abstain from enforcing 242. The Supreme Court is not empowered to base a decision on "policy considerations" if the action effectively eliminates an opportunity that Congress intended to create.

3.4. Withholding Congressionally Authorized Equitable Relief

The Supreme Court has decided that federal courts must refuse to provide constitutionally authorized relief when certain circumstances obtain and other circumstances do not.

3.4.1. Justification for Withholding Authorized Equitable Relief

Refusing to provide authorized equitable relief because of "undue" interference with state proceedings is "the normal thing to do" in some "classes of cases."

"That principle [that federal courts lack the authority to abstain from the exercise of conferred jurisdiction] does not eliminate, however, and the categorical assertions based upon it do not call into question, the federal courts' discretion in determining whether to grant certain types of relief - a discretion that was part of the common-law background against which the statutes conferring jurisdiction were enacted. See Shapiro, Jurisdiction and Discretion, 60 N. Y. U. L. Rev. 543, 570-577 (1985). Thus, there are some classes of cases in which the withholding of authorized equitable relief because of undue interference with state proceedings is 'the normal thing to do,' Younger v. Harris, 401 U.S. [37], at 45 ." New Orleans Pub. Serv., Inc. v. New Orleans, supra.

I provided the bracketed expansion. Federal interference with a fraudulent or unconstitutional "state" proceeding would not be "undue."

3.4.2. Careful Definition, Careful Application

"We have carefully defined, however, the areas in which such 'abstention' is permissible, and it remains `the exception, not the rule.' Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 236 (1984), quoting Colorado River Water

Conservation Dist. v. United States, _424 U.S. 800, 813 (1976)." New Orleans Pub. Serv., Inc. v. New Orleans, supra.

A "careful" definition should be carefully applied. This task may prove to be trickier than it looks.

3.4.3. Younger Doctrine and Illegitimate Proceedings "Judicial in Nature"

The Younger Doctrine requires a federal court to refrain from providing authorized relief when certain circumstances do not obtain and the circumstances that do obtain satisfy a three-pronged test. The court may not abstain if the plaintiff shows that a state official acted in bad faith, a proceeding was biased, an "exceptional" or "unusual" circumstance is present, or that one or more of certain other circumstances are present. (Younger v. Harris, 401 U.S. 37 (1971); Gibson v. Berryhill, supra; Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423 (1982); Squire v. Coughlan, 469 F. 3d. 551 (6th Cir. 2006) especially section IIC).

The Sixth Circuit Court of Appeals has recognized that it must respond to an attempt to show bad faith, or "exceptional" or "unusual" circumstance.

"The Younger court relied on the notion of federal/state comity... Id., 401 U.S. at 43-45, 91 S.Ct. at 750-751[Younger v. Harris, 401 U.S. 37 (1971)]. They also relied upon traditional principles of equity jurisprudence, among them the principle that an injunction will not be granted where the

plaintiff has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief. Id., 401 U.S. at 43-44, 91 S.Ct. at 750...In Younger, however, the Court clearly left open the possibility of federal injunctive relief against a pending state court proceeding in certain exceptional circumstances...where there is a showing of "bad faith, harassment, or other unusual circumstances that would call for equitable relief," id., 401 U.S. at 54, 91 S.Ct. at 755." Martin-Marietta Corp. v. Bendix Corp., 690 F.2d. 558 (6th Cir. 1982).

This court found "extraordinary circumstances" and intervened.

3.4.3.1. Fraud on the Court: Bias, Bad Faith; "Unusual" or "Extraordinary" Circumstance: Violation of Constitutional Guarantee

I alleged that Kimberly Childers consciously favored local residents by, in effect, accepting the defendants' invitation to conduct a bench trial, thus violating Section Seven of the Kentucky Constitution. Some might consider such an action "unusual" or "extraordinary," perhaps even "shocking" to the "conscience" or to the "sense of fair play."

3.4.3.1.1. Attempting to Bias a Proceeding

An expansive criterion:

"Fraud on the court is defined in terms of its effect on the judicial process, not in terms of a particular

representation or omission...Fraud on the court is limited to fraud that does, *or at least attempts to*, 'defile the court itself' or that is perpetrated by officers of the court 'so that the court cannot perform in its usual manner its impartial task of adjudging cases.'" T.J. Moore & J. Lucas, *Moore's Federal Practice*, p. 52, Section 60.21 [4][a] (2d Ed. 1978). Citations omitted.

My emphasis.

3.4.3.1.2. Extraordinary Circumstance: Acting in Bad Faith

Another expansive characterization:

"[*Potter*] applies only in the extraordinary circumstances where a fraud has been perpetrated on the court. 'It encompasses bad faith conduct, abuse of judicial process, any deception of the court and lack of candor to the court.'" Commonwealth v Gross, Ky., 936 S.W. 2d 85 (1996), quoting Potter v. Eli Lilly, Ky., 926 S.W. 2d 449 (1996); also Cardwell v. Commonwealth, Ky., 12 S.W. 3d 672 (2000)).

An attempt by a judge to bias a proceeding is "bad faith conduct" -- an "extraordinary circumstance."

3.4.3.1.3. Sixth Circuit: Reckless Disregard

The Sixth Circuit has chosen a stringent standard:

"Given the Special Master's finding of no deliberate or willful failure to disclose information arising from an evil motive, we believe the type of reckless disregard to be examined in this case is the second type described in Restatement (Second) of Torts Section 500, comment (a):

Recklessness may consist of either or two types of conduct.... In [the second type], the actor has...knowledge, or reason to know, of the facts, but does not realize or appreciate the high degree of risk involved, although a reasonable man in his place would do so. An objective standard is applied to him, and he is held to the realization of the aggravated risk which a reasonable man in his place would have, although he does not himself have it.

Such recklessness can and should be determined from an objective examination of the actions of the parties in a particular set of circumstances." Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993) cert. denied, 115 S. Ct. 295 (1994); also U.S. v. Twitty, 44 F.3d 410 (6th Cir. 1995).

(It is well-established that *motive* is not an element of fraud; *intent* (scienter) is the element.)

3.4.3.1.4. Summary Judgment and Section Seven of the Kentucky Constitution

Section Seven of the Kentucky Constitution guarantees a trial by jury:

"Section 7. Right of trial by jury. The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this constitution."

The Kentucky Supreme Court has compared the Kentucky standard for summary judgment to the federal standard and decided to retain the strict Kentucky Standard:

"The constitutional term 'inviolate' means that the right to jury trial is unassailable. Henceforth, legislation and civil rules of practice shall be construed strictly and observed vigilantly in favor of the right and is [sic] not to be abrogated arbitrarily by the courts. The constitutional right to a jury trial cannot be annulled, *obstructed*, impaired, or restricted by legislative or judicial action." Steelvest, Inc. v. Scansteel Service Ctr., Inc. 908 S.W. 2d 104 (Ky. 1995).

My emphasis. I presented a detailed analysis of the Kentucky standard and Section Seven to the lower courts in a document entitled "*Argument*". In Kentucky, a "movant" must establish "beyond doubt, question, or controversy" that the evidence of record presents no genuine material issues of fact, where a material issue of fact is genuine unless the "movant" establishes beyond doubt that the evidence of record resolves the issue in such a way that the adverse party *could not produce evidence at trial* that could convince a jury to decide the issue in his favor. A judge is duty-bound to scrutinize the evidence of record for

material issues of fact in order to determine whether the "movant" has successfully carried his burden of proof. Rowland v. Miller's Adm'r. Ky., 307 S.W. 2d 3 (1956). It's up or down and there is no wiggle room. The action required of a judge in response to a genuine motion for a summary judgment is clearly distinct from the action permitted to a judge who is conducting a bench trial. Any judge could be inferred or presumed to have *actual* knowledge of the distinction between reviewing a motion for a summary judgment and deciding the factual (jury) issues of a case.

3.4.3.1.5. Fraud and Constitutional Violation

I alleged and argued in excruciating detail in the document presented to the lower courts entitled "*Argument*" that Kimberly Childers, in effect, accepted the defendants' invitation to conduct an unconstitutional bench trial. The defendants simply presented a few material issues of fact for Kimberly Childers to decide for them and she responded by "deciding" them. It looks like a set-up.

3.4.3.2. Three-Pronged Test: No State Proceeding, No State Interest, No Forum

If there is no showing of "unusual" circumstance, etc., then the court must apply a three-pronged test. Middlesex County Ethics Comm'n v. Garden State Bar Ass'n,, supra; Squire v. Coughlan, supra.
A court cannot apply the three-pronged test without considering an allegation that a judge

conducted a fraudulent proceeding or a proceeding that violated a provision of the state constitution.

3.4.3.2.1. Fraudulent or Unconstitutional Proceeding Is Not a State Proceeding

1. The desired federal action interferes with an ongoing state proceeding.

An official who acts unconstitutionally is "stripped of his official or representative character." Ex Parte Young, supra. This rationale should also apply to a state official's violation of a state constitutional guarantee: a state official who acts in violation of the state constitution acts under color of state law but he would be "stripped of his official or representative character." The proceeding is also "stripped" of its "official character."

(The alleged unconstitutional bench trial had been concluded and an appeal had been initiated before I initiated the 1983 action: the personal injury deadline in Kentucky is one year. The Kentucky Court of Appeals reversed the fraudulent "summary judgment," undisturbed by the 1983 action.)

2. The ongoing state proceeding serves an "important state interest." A proceeding that is fraudulent or prohibited by the state constitution cannot be said to serve *any* state interest

Lawyers in rural counties are motivated to ignore judicial misconduct and respond to a rogue

proceeding by initiating an appeal of a judgment, if they respond at all. (I cited examples in the document entitled "*Argument.*" Rowland v. Miller's Adm'r. supra; Conley v. Hall, Ky., 95 S.W. 2d 575 (1965); Fischer v. Heckermann, Ky. App., 772 S.W. 2d 642 (1989)). An appeal can not "cure" bias (or conscious favoritism) or render a prior unconstitutional proceeding constitutional: "Even appeal and a trial *de novo* will not cure a failure to provide a neutral and detached adjudicator" Concrete Pipe and Products v. Constr. Laborers Trust, supra; Ward v. Village of Monroeville, supra; Gibson v. Berryhill, supra. A judgment issuing from a proceeding conducted in violation of a guarantee of the state constitution is void. Consequently, an attempt to argue on appeal that such a judgment is legally erroneous serves no useful purpose -- it is in fact inimical to the public (state) interest. Furthermore, a will contest is a lawsuit like many another and the state is not a party.

3. The ongoing state proceeding provides a forum to address "constitutional issues." The ongoing state proceeding would be the pernicious and superfluous appellate proceeding.

I'm not sure what are and what are not "constitutional issues or claims." There may be *no* unsettled *federal* constitutional issues in this case. It is clear that a judge who acts as I have alleged violates federal guarantees of due process of law and equal protection of the law. (In order to determine whether an action constitutes a substantive due process violation, it would be

necessary to determine the state of the Supreme Court's majority conscience or sense of fair play.)

A state judge who conducts a proceeding that is fraudulent or that violates a state constitutional guarantee thus ensures that his proceeding fails the three-pronged test. It is not possible to apply the three-pronged Younger test correctly in the present case without addressing my allegation that the initial proceeding at issue was fraudulent and that it was prohibited by the Kentucky Constitution.

3.4.4. Equitable Relief For Conscious Judicial Favoritism

If bias in a proceeding is not "cured" by an appeal, then a different remedy for this wrong must exist. Kentucky law sensibly preserves an equitable remedy for judicial misconduct that is distinct from an appeal (Section 2.4 above). Kentucky's CR 60.02 and 60.03, like FRCP 60(b), preserve and provide an equitable means for obtaining relief from fraudulent judgments. CR 62.04 requires that an appeal be abated when an independent equitable action pursuant to CR 62.03 is initiated: if the independent action is successful, the question of the correctness of the judgment does not arise: it is not then necessary to revive an appeal. (Appendix, p. 78 and p. 79). Constructive fraud on the court suffices to void a judgment in Kentucky. Hamilton v, Hayes Freight Lines, Inc., Ky. 251 S.W. 277 (1952); Kendrick v. Bailey Vault Co., Inc., Ky. App. 944 S.W.2d. 147 (1997). The Michigan Supreme Court:

"A 'void' judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack ... No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not *res judicata*, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been.

The Supreme Court invoked FRCP 60(b) when it was confronted with a "strong appearance of impropriety":

"2. *Vacatur* was a proper remedy for the 455(a) violation in the circumstances of this case. In determining whether a 455(a) violation requires vacatur under Rule 60(b)(6) - which gives federal courts broad authority to grant relief from a final judgment "upon such terms as are just," provided that the motion is made within a reasonable time - *it is appropriate to consider the risk of injustice to the particular parties, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process*. Here, despite his lack of actual knowledge of Loyola's interest in the dispute during trial, Judge Collins' participation in the case created a strong appearance of impropriety..." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988).

My emphasis. Kimberly Childers' action created a "strong appearance of impropriety." And the lower federal courts apparent resistance to an obvious cause of action creates an impression of bias that would serve to "undermine the public's confidence in the judicial process."

3.5. Action in Equity, Action at Law

Both Kentucky and federal law preserve a distinct means to pursue *equitable* relief for judicial misconduct (CR 60.02 and CR 60.03, FRCP 60(b)). Fraud perpetrated by a judge on a court obviously violates the constitutional guarantee of due process as well as the guarantee (sometimes) of equal protection. A procedural due process violation also inflicts an injury that merits an award of at least nominal damages, although an injured party cannot demand his dollar (Carey v. Piphus, supra; Farrar v. Hobby, supra). Neither the remedy in equity nor the remedy at law is adequate by itself.

3.6. Fourth Question. Denial of Due Process: Improper Dismissal

The lower courts failed to satisfy or acknowledge the Supreme Court's stringent requirements for procedural due process.

3.6.1. Court Must Address Evidence and Argument

Due process requires an evidentiary hearing. Goldberg v. Kelly, 397 U.S. 254 (1970). 12(b)(6) won't work for the present case:

"In considering a motion to dismiss pursuant to Rule 12(b)(6), all well-pleaded factual allegations of the complaint must be accepted as true and the complaint construed in the light most favorable to the plaintiffs. Id. [Inge v. Rock Fin. Corp., 281 F. 3d 613, 619 (6th Cir. 2002)]. It is well-settled that dismissal of a complaint is proper 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.' Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957))." Cuno v DaimlerChrysler, 448 F. 3d 853 (6th Cir. 2004).

I presented an obsessive document entitled "*Argument*" to the lower courts that attempted to support my allegation, which is pretty obviously true, anyway. Conley establishes one test for a deciding whether a court has provided a "meaningful " and "appropriate" hearing. If a judge who has jurisdiction must provisionally accept a "well-pleaded" factual allegation of misconduct -- civil rights violations -- that I presented in the document entitled *Argument*, then he cannot *dismiss* the civil rights action by invoking the Younger Doctrine. Furthermore, the misconduct allegation is not independent of the three-pronged Younger test.

A judge is presumed to be honest. Withrow v. Larkin, 421 U.S. 35 (1975). But a judge might also be presumed or inferred to have *actual* knowledge that conducting a bench trial in the guise of a summary judgment proceeding

constitutes a civil rights violation. Neither 242 nor 1983 requires a showing of *actual* knowledge to establish culpability (Section 3.3, above).

3.6.2. Appearance of Partiality

Judges should strive to avoid creating an appearance that they are shielding a crooked judge (Section 2.5.1 above).

3.6.3. Appearance of Justice and Fairness

" ...Indeed, *'justice must satisfy the appearance of justice,'* Offutt v. United States, 348 U.S. 11, 14 (1954) and this stringent rule may sometimes bar trial by judges who have no actual bias..." Marshall v. Jerrico, supra.

This due process requirement imposes upon a judge an affirmative duty to attempt to create an appearance of justice and fairness. The panel's failure to recognize and respond to my arguments and evidence creates the *appearance* that they ignored the arguments and evidence.

3.6.4. Court Must Acknowledge Arguments and Respond in Writing

1. Justice must satisfy the appearance of justice.
2. A judge must attempt to create an appearance of justice and fairness.
3. In the circumstances, any evidence of such an attempt would appear in writing in the decision.
4. The right to procedural due process is absolute, in the sense that it does not depend on the merits

of a party's "substantive assertions." (*Carey v. Piphus*, supra).
5. It follows from the preceding premises that the panel was required to *appear* to acknowledge and respond to my arguments *in writing* in its decision.
6. The panel's decision fails to create an appearance that it recognized my arguments. Indeed, the decision's abbreviated content establishes an *appearance* that the panel did *not* read or consider my arguments or read my dogged attempts to correct the persistent misrepresentation of the nature of the alleged injury, an *appearance* of injustice.
7. The panel's actions failed to satisfy a requirement for procedural due process.
8. The panel's decision is void.

3.6.5. Reckless Disregard

The Sixth Circuit has chosen a "reckless disregard" standard for fraud on the court (Demjanjuk v. Petrovsky,. supra; U.S v. Twitty, supra; Section 3.4.3.1.3 above). I believe that the panel's dismissal constitutes evidence of negligence and bias. If my belief is a belief that would be shared by the public, then the panel has perpetrated a due process violation. This allegedly "reckless" conduct, which creates an *appearance* of injustice, would constitute at least an abuse of discretion.

4. Final Statement and Request

My civil rights complaint alleges an injury of a kind that motivated Congress to enact the Civil Rights

Act of 1871. A federal court has jurisdiction and the Younger Doctrine requires a federal court to address arguments and evidence presented in support of an allegation that a state judge, acting with conscious favoritism, conducted a fraudulent proceeding in violation of a guarantee of the state constitution. The lower courts failed to satisfy or acknowledge this Court's requirements for due process of law. The Sixth Circuit Panel repeated the factual and legal errors of the District Court I ask this Court to direct them to acknowledge and address the arguments and evidence that I presented and respond.

Submitted on this 13 Day of May, 2008 by

Michael L. Stewart, Ph.D.
215 West Maple Avenue
Lancaster, KY 40444
Michael_L_Stewart @ Yahoo.com
(859) 792-2560

Appendix

1. Orders and Judgments

1.1. Order of the Court of Appeals (8 November, 2007)

[I have included my comments enclosed in brackets. The following order is presented as a de novo review, but it repeats the factual errors and due process violations of the district court Memorandum Opinion and Order (Appendix, p. 52]. The factual errors provide evidence that the panel relied on the erroneous district court document and did not read the 1983 complaint. This implies that the representation that this order is the product of a de novo review is false.]

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-5575

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL L. STEWART Plaintiff-Appellant, v.
KIMBERLY CHILDERS, in her official capacity as Circuit Court Judge for Knott d Magoffin Counties, Kentucky, Defendant-Appellee.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTJUCT OF
KENTUCKY

FILED
November 08 2007
LEONARD GREEN, Clerk

ORDER

Before: DAUGHTREY and GILMAN, Circuit Judges; EDMUNDS, District Judge*

Michael L. Stewart, a Kentucky citizen, appeals pro se a district court order dismissing his civil rights complaint, filed under 42 U.S.C. § 1983, without prejudice for lack of jurisdiction. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Stewart filed this complaint against a state court judge in her official capacity, seeking a declaration that the defendant's ruling [This is a factual error about the content of the complaint. Appendix, p. 71) in a probate action violated his constitutional rights [Complaint alleges judicial misconduct, Appendix, p. 71]. Defendant moved to dismiss the complaint, and Stewart responded. The district court dismissed the complaint without prejudice for lack of jurisdiction. Stewart reiterates his arguments on appeal.

*The Honorable Nancy G. Edmunds, United States District Judge for the Eastern District of Michigan, sitting by designation.

[Page 2]

We review the application of the law to the facts in a dismissal for lack of jurisdiction de novo. [False statement: the panel did not provide a de novo review.] Golden v. Gorno Bros., Inc., 410 F.3d 879, 881 (6th Cir. 2005). De novo review in this case indicates that the complaint was properly dismissed for the reasons stated by the district court. [The order now proceeds to repeat the factual errors of the Memorandum Opinion and Order, Appendix, p 52.]

[First due process violation.] Stewart initially lost in state court, although the judgment complained of has since been overturned on appeal, and complained in this federal action of injuries caused by that state court judgment [This is a factual error concerning the content of the complaint that appears to be reproduced from the Memorandum Opinion and Order, p 52.] inviting the district court to review and reject the judgment [This is another factual error. Appendix, p. 73 : "...1.7 This complaint does not assert that the Kentucky law of summary judgment fails to satisfy constitutional requirements; nor does it ask a federal court to review a state court's interpretation of state law." Also quoted in Section 1 of this Petition, p.4.] Therefore, the district court clearly lacked jurisdiction under the Rooker-Feldman doctrine. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). [The panel repeats the factual errors of the district court concerning the content of the complaint. It has not tried to understand the alleged cause of action.]

[Second Due Process Violation]. The district court also properly noted that, even if jurisdiction existed, it would be required to abstain, because the state court proceeding was still pending, an important state interest was involved, and Stewart had an adequate opportunity to raise his claims in that proceeding. [This ignores both the Younger Doctrine and the foundation of the 1983 complaint, which alleges *bias and misconduct*, e.g., that a state judge, acting with conscious favoritism, violated *by her actions* the guarantee of trial by jury. An appeal of a ruling that eventuates from an unconstitutional proceeding is superfluous and inimical to state (public) interest: no state interest, no (legitimate) ongoing state proceeding.]; Carroll v. City of Mount Clemens, 139 F.3d 1072, 1074 (6th Cir. 1998); Mann v. Conlin, 22 F.3d 100, 104-06 (6th Cir. 1994).

Accordingly, the dismissal of this complaint without prejudice is affirmed. Rule 34G)(2)(C), Rules of the Sixth Circuit. [This order repeats the factual errors of the Memorandum Opinion and Order, Appendix, p. 52. It does not in fact apply the Younger Doctrine].

[Two due process violations: misrepresentation of the source of the alleged injury and failure to address the evidence for allegation of fraud and violation of Section Seven of the Kentucky Constitution, which affect the application of the three-pronged Younger test. The panel's action satisfies the Sixth Circuit "reckless disregard" misconduct criterion. Demjanjuk v. Petrovsky,

supra. There was no de novo review. This ruling is void.]

ENTERED BY ORDER OF THE COURT

/s Leonard Green [maybe]

Clerk

1.2. Denial of En Banc Review (19 February, 2008)

No. 07-5575

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL L. STEWART, Plaintiff-Appellant, V.
KIMBERLY CHILDERS, IN HER OFFICIAL CAPACITY AS CIRCUIT JUDGE FOR KNOTT AND MAGOFFIN COUNTIES, KENTUCKY, Defendant-Appellee.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTJUCT OF
KENTUCKY

FILED
FEB 19 2008
LEONARD GREEN, Clerk

ORDER

BEFORE: DAUGHTREY and GILMAN, Circuit Judges; and EDMUNDS, District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for

rehearing [And failed to detect the factual errors] and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

[/s] Leonard Green [maybe]
Leonard Green, Cierk [Handwritten squiggle]

*

Hon. Nancy G. Edmunds, United States District Judge for the Eastern District of Michigan, sitting by designation.

1.3. Order of the District Court (30 March, 2007)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

CIVIL ACTION NO. 07-CV-23-GFVT

MICHAEL L. STEWART PLAINTIFF VS: KIMBERLY CHILDERS DEFENDANT

[Stamp] Eastern District of Kentucky
FILED
MAR 30, 2007
AT PIKE VILLE
LESLIE G. WHITMER
CLERK,U S DISTRICT COURT

ORDER

The defendant has filed a motion to dismiss the complaint [Record No. 4]. **IT IS HEREBY ORDERED** that Plaintiff shall file a response to Defendant's motion to dismiss within twenty (20) days of the entry of this Order. Plaintiff is hereby cautioned that his failure to file a response constitutes grounds for granting the motion. LR 7.1 (c)(1).

This the 30th day of March, 2007.

Signed By:

Gregory F. Van Tatenhove [s/Initials]

United States District Judge
[Seal] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

1.4. Memorandum Opinion and Order of the District Court (11 April, 2007)

[I have inserted comments in brackets. The Complaint clearly alleges that an injury was inflicted by misconduct of a judge, not by misconduct of a judgment. Judge Van Tatenhove isolates the phrase "entry of summary judgment," and somehow interprets it as an allegation that an injury was inflicted by a judgment. The complaint clearly alleges that Kimberly Childers inflicted a civil rights injury by conducting an unconstitutional and fraudulent proceeding. Appendix, p 66. The content of the "summary judgment" constitutes the *evidence of misconduct*, not the source of the injury. Fraud is perpetrated by the "misrepresentor," not the misreprsentation.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

CIVIL ACTION NO. 07-CV-23-GFVT

MICHAEL L. STEWART PLAINTIFF VS. KIMBERLY CHILDERS DEFENDANT

[Stamp] Eastern District of Kentucky
FILED APRIL 10, 2007
AT PIKEVILLE
LESLIE C. WHITMER
CLERK, U.S. DISTRICT COURT

MEMORANDUM OPINION AND ORDER

Plaintiff Michael L. Stewart ("Stewart") filed this action pursuant to 42 U.S.C. § 1983 against Circuit Judge Kimberly Childers in her official capacity, alleging that Judge Childers's entry of summary judgment against him in a probate proceeding violated his constitutional rights to due process, equal protection under the law, and to a jury trial. Complaint at ¶1.2.

[Judge Van Tatenhove's version of my stated cause of action here clearly founds it on a misconduct allegation, e.g., that Kimberly Childers violated Section Seven of the Kentucky Constitution by conducting a bench trial in the guise of a summary judgment proceeding. I argued that the *content* of the "summary judgment" is <u>*evidence of judicial misconduct*</u>. A judge can violate Section Seven; a *judgment* cannot.)

The defendant has filed a motion to dismiss the complaint [Record No. 4], which has been fully briefed by the parties. The defendant asserts that (1) the Court lacks subject matter jurisdiction over Stewart's claims under the *Rooker-Feldman* doctrine, and (2) even if subject matter jurisdiction does exist, the Court should decline to exercise such jurisdiction under the *Younger* abstention doctrine.

DISCUSSION

Ordinarily, a motion to dismiss under Rule 12(b)(6) "should not be granted unless it appears beyond

a doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Conley v. Gibson, 355* U.S. 41, *45-46* (1957). Here, however, the defendant does not challenge the sufficiency of Plaintiffs allegations, but the subject matter jurisdiction of the Court. When evaluating such a motion under Rule 12(b)(1), the burden [Page 2]] remains at all times with the plaintiff to establish jurisdiction, and the court is free to weigh the evidence. *RMI Titanium Co. v. Westinghouse Elec. Corp.,* 78 F.3d 1125, 1134 (6th Cir. 1996).

The defendant's challenge to the Court's subject matter jurisdiction is premised upon 28 U.S.C. § 1257, which grants the Supreme Court of the United States appellate jurisdiction over any final decision rendered by the highest appellate court of any of the several States. In the *Rooker* and *Feldman* decisions, the Supreme Court held that in order to give effect to this provision, federal district courts must be held to lack subject matter jurisdiction over an action that effectively serves as an appeal from a state court judgment. *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman,* 460 U.S. 462 (1983). In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.,* 544 U.S. 280 (2005), the Supreme Court recently clarified that the doctrine does not apply where the subsequent action merely calls into question the propriety of the prior state court judgment, but rather only where the subsequent action identifies the prior state court judgment as the source of the injury. [The complaint clearly states in Section 1.7 of the Preliminary Statement that that it does not

ask a federal court to review the "summary judgment" and that the "summary judgment has been appealed separately. Appendix, p. 73. The content of the "summary judgment" is *evidence* that Kimberly Childers conducted an unconstitutional "bench trial."] The former type of action is governed by ordinary application of principles regarding claim and issue preclusion. *Coles v. Granville,* 448 F.3d 853, 858 (6th Cir. 2006).

Thus, the *Rooker-Feldman* doctrine will not prevent a plaintiff from suing a participant in a prior state court proceeding for allegedly filing a false affidavit resulting in an adverse determination against the plaintiff. *Brown v. First Nat. Mtg. Corp.*, 2006 WL 3289232, *3 (6th Cir. 2006) (unpublished disposition) [Judge Van Tatenhove neglects to mention that Brown alleged misconduct by the judge of the Court of Common Pleas of Montgomery County, and the court recognized this a an alleged source of injury. Section 2.1.1. of this Petition.] *(Rooker-Feldman* does not bar "an independent claim, 'albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party.'"). It does apply where the federal plaintiff identifies the prior state court decision as the source of the injury. As the Sixth Circuit has recently explained:

The inquiry then is the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the Rooker-Feldman doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's

actions, then the plaintiff asserts an independent claim.

...

Suppose a state court, based purely on state law, terminates a father's parental rights and orders the state to take custody of his son. If the father sues in federal court for the return of his son on grounds that the state judgment violates his federal substantive due process rights as a parent, he is complaining of an injury caused by the state judgment and seeking its reversal. This he may not do, regardless of whether he raised any constitutional claims in state court, because only the Supreme Court may hear appeals from state-court judgments. *McCormick v. Braverman*, *451* F.3d 382, 392-94 (6th Cir. 2006).

In the prayer for relief in his complaint, Stewart asks this Court to

declare that Kimberly Childers' entry of summary judgment [her <u>action</u>] violated his constitutionally guaranteed rights, including his rights to due process of law and equal protection of the law, ..., as well as the right to trial by jury, ...

Complaint at pg. 10. [The phrase "entry of summary judgment" *may* be ambiguous taken out of context. In the context of the *preliminary statement and content of the complaint, it is not ambiguous at all*; it is clearly an allegation of misconduct, viz., that Kimberly Childers' action (entry of a fraudulent judgment) denied me my right to trial by jury. I argued at length that the content of the "summary judgment" constituted

evidence that Kimberly Childers had violated my rights by conducting a bench trial -- decided jury issues --- in response to a phony "motion for a summary judgment." Fraud is perpetrated by a person, not by a representation (judgment).] The defendant is thus precisely correct when she asserts that this is a "textbook" case for application of the *Rooker-Feldman* doctrine. The plaintiff's complaint alleges that the state court decision [no, Kimberly Childers] violates his constitutional rights and [she] is thus the source of his injury [How could anyone get this wrong?]. Because this claim could and should have been presented on direct appeal from the judgment, this Court lacks subject matter jurisdiction to entertain it [A judgment that eventuates from an unconstitutional proceeding is void ab initio - an appeal is superfluous.] 28 U.S.C. § 1257; *Exxon Mobil,* 544 U.S. at 285; *Hoblock v. Albany County Bd. of Elections,* 422 E3d 77, *85-87* (2nd Cir. 2005). Accordingly, Plaintiffs complaint must be dismissed without prejudice. [Footnote 1.] [Conflating the effect of a judgment with the effect of the actions of a judge insulates a judge from misconduct complaints.]

[Footnote 1] Although not necessary to the outcome in this case, the Court also agrees that *Younger* abstention would be required even if *Rooker-Feldman* did not negate the existence of subject matter jurisdiction. Stewart has acknowledged that his appeal of the state court's entry of summary judgment remains pending, and that appeal unquestionably provides him with the opportunity to challenge that ruling on the same constitutional grounds he asserts here. [The state *proceeding* was unconstitutional; the customary appeal of a fraudulent summary judgment as "mere" legal error is inimical to the public (state) interest.] The

requirements for *Younger* abstention are all present here [Wrong: there is a allegation of bad faith, conscious favoritism, an illegitimate proceeding, etc.]. *Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457* U.S. 423, 432 (1982); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 15 (1987) ("[W]hen a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy.").

[Page 3]

CONCLUSION

Accordingly, it is **ORDERED** as follows:

(1) Defendant's motion to dismiss [Record No. 4] is **GRANTED.**

(2) Plaintiffs complaint is **DISMISSED WITHOUT PREJUDICE.**

(3) Judgment shall be entered contemporaneously with this Memorandum Opinion and Order in favor of the defendant.

This the 10th day of April, 2007.

Signed By:

Gregory F. Van Tatenhove [s/ Initials?]

United States District Judge

[Seal] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

[Stamp] NOTICE IS HEREBY GIVEN OF THE
OF THE ENTRY OF THIS ORDER OR JUDGMENT
ON 4-11-07
LESLIE G. WHITMER
BY RKT D.C.

1.5.Order of the District Court (11 April, 2007)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

CIVIL ACTION NO. 07-CV-23-GFVT

MICHAEL L. STEWART PLAINTIFF VS. KIMBERLY CHILDERS DEFENDANT

[Stamp] Eastern District of Kentucky
FILED APRIL 10, 2007
AT PIKEVILLE
LESLIE C. WHITMER
CLERK, U.S. DISTRICT COURT

JUDGMENT

In accordance with the Memorandum Opinion and Order entered this date and pursuant to Rule 58 of the Federal Rules of Civil Procedure, it is hereby

ORDERED and ADJUDGED as follows:
(1) Plaintiff Michael L. Stewart has filed a civil rights action under 42 U.S.C. §1983 against Defendant Kimberly Childers in her official capacity as Circuit Court Judge for Knott and Magoffin Counties, Kentucky.
(2) The complaint is **DISMISSED**, without prejudice.
(3) Judgment is entered in favor of the defendant.

(4) The Court certifies that any appeal would not be taken in good faith. 28 U.S.C. §1915*(a)(3); McGore v. Wrigglesworth,* 114 F.3d 601, 610-11 (6th Cir. 1997); *Kincade v. Sparkman,* 117 F.3d 949 (6th Cir. 1997). [Given the due process violations , this is an abuse of discretion.]
(5) This is a **FINAL and APPEALABLE** Judgment and there is no just cause for delay.
(6) This matter is **DISMISSED** and **STRICKEN** from the Court's docket.

[Page 2]

This the 10th day of April, 2007.

Signed By: ***Gregory F. Van Tatenhove*** [s/ Initials?]
United States District Judge

[Seal] UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

[Stamp] NOTICE IS HEREBY GIVEN OF THE
OF THE ENTRY OF THIS ORDER OR JUDGMENT
ON 4-11-07
LESLIE G. WHITMER
BY RKT D.C.

1.6. Order of the District Court (19 April, 2007)

[The motion for a new "trial" was an attempt to offer the judge an opportunity to try to get the facts straight. No luck.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION PIKE VILLE

CIVIL ACTION NO. 07-CV-23-GFVT

MICHAEL L. STEWART PLAINTIFF VS. KIMBERLY CHILDERS DEFENDANT

[Stamp] Eastern District of Kentucky
FILED APRIL 19, 2007
AT PIKEVILLE
LESLIE C. WHITMER
CLERK, U.S. DISTRICT COURT

ORDER

Michael Stewart filed *a pro se* civil rights complaint on February 5, 2007 [Record No. 2]. On April 10, 2007, the Court entered a Memorandum Opinion and Order and Judgment dismissing Stewart's complaint without prejudice for lack of subject matter jurisdiction [Record Nos. 10, 11]. On April 18, 2007, plaintiff filed a "Motion for a New Trial" pursuant to Federal Rule 59(a) [Record No. 12]. Because no trial was had in this matter, the Court construes his motion as one to alter, amend, or vacate the judgment. Fed.R.Civ.P. *59(e)*, However, because Stewart's motion does not advise the

Court of an intervening change in the controlling law, present newly available material evidence, or demonstrate clear legal error or manifest injustice, *Berridge v. Heiser*, 993 F.Supp. 1136, 1146-47 (S.D. Ohio 1997), he has presented no basis for relief Plaintiff has recharacterized his arguments, but their substance is unchanged [Actually, it was an attempt to eliminate the judge's former misinterpretation]. A Rule 59 motion is not an opportunity to reargue his case. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 1998 WL 288685 (6th Cir. 1998) (unpublished disposition). The Kentucky Court of Appeals' reversal of the summary judgment about which be complains would appear to render his claims moot, and ongoing proceedings before the Knott Circuit Court continue to make *Younger* abstention appropriate [Constitutional violation renders a judgment void ab initio; Reversal on appeal does not -- not moot. Church of Scientology v. U.S., 506 U.S. 9 (1992)]. Plaintiff's motion [Record No. 12] must be DENIED.

[Handwritten] Ent 4/19/07 RKT

[Page 2]

IT IS SO ORDERED. This 19th day of April, 2007.

Signed By:

Gregory F. Van Tatenhove [s/ Initials?]

United States District Judge
[Seal] UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY

1.7. Mandate (27 February, 2008)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: *07-5575*

Filed: February 27, 2008

MICHAEL L. STEWART, Plaintiff - Appellant V.
KIMBERLY CHILDERS, in her official capacity as Circuit Court Judge for Knott and Magoffin Counties, Kentucky, Defendant - Appellee

MANDATE

Pursuant to the court's disposition that was filed November 8, 2007, the mandate for this case hereby issues today.

COSTS: NO COSTS

2. Fake "Summary Judgment" (22 February, 2006)

[I have included comments in brackets. The judgment is not a summary judgment; it's content is evidence of misconduct. Reversed on Appeal.]

COMMONWEALTH OF KENTUCKY
KNOTT CIRCUIT COURT
CASE NO. 03-CI-00057

MICHAEL L. STEWART and CHAKLES A. STEWART, PLAINTIFFS v. RUDOLF NOBLE and ALICE NOBLE, CO-EXECUTORS OF THE ESTATE OF ALBERT STEWART and RUDOLF NOBLE and ALICE NOBLE, Individually DEFENDANTS

[Stamp] [handwritten check mark] ENTERED THIS 22 DAY OF FEB 2006 JUDY WATSON-CONLEY, CLERK BY [Unknown signature] D.C.

SUMMARY JUDGMENT

[This is not a summary judgment. It is evidence of Kimberly Childers' fraudulent and unconstitutional actions.] This case stands submitted to the Court for a decision on the Motions for Summary Judgment filed by each of the parties The Court having reviewed the pleadings, depositions, motions2 supporting memorandums and the arguments of counsel does hereby make the following Findings of Fact and Conclusions of Law and enters Summary Judgment for the Defendants.

FINDINGS OF FACT

[Evidence of an unconstitutional bench trial. The judge' is empowered to decide whether the "movant" has carried his burden of proving that there are no jury issues; the judge is not empowered to decide jury issues. The defendant's motion did not even attempt to carry this burden of proof. Kimberly Childers has violated Section Seven of the Kentucky Constitution.]

The Court finds from the evidence [Unconstitutional bench trial] as follows:

1. The testimony of Jerry Stone established without dispute that at the time he made his Will on February 2,2001, Albert Stewart was of sound mind and disposing memory, that he was fully cognizant of the natural objects of his bounty, and the effect and consequences of the terms of the Will he was about to execute. [Decision founded on testimony is a jury issue as a matter of law.]
2. That Albert Stewart made his Will dated February 2,2001, freely and voluntarily, under no constraint or undue influence from any person or persons including but not limited to Rudolf Noble or Alice Noble. [Jury Issue. Prima Facie case for undue influence.]

[Page 2]

3. There is no evidence to support the Plaintiffs' contention that Mr. Stewart was induced to execute the Will by fraud. They have not established any of the elements required to

maintain an action for fraud in this state that being a false representation having been made in respect to a present or past material fact as distinguished from mere opinion or future promise; which the maker of the statement knew to be false or made it recklessly without knowledge of its truth; with the intention of inducing or influencing the hearer to act; which was relied on by Mr. Stewart and which resulted in injury or damage to the person,- Mr. Stewart, being influenced. [These are not the "elements" of fraud in Kentucky or anywhere else. Kimberly Childers has copied this from the fake motion for summary judgment. Jury issue.]

4. The provisions of items ii and III of the Will created a "dry" trust because the trustee had no duties to perform and the beneficiary of the Trust and the remainderman upon termination of the Trust were one and the same. [Legal error copied from fake motion for summary judgment.]

6. The Will of Albert Stewart was properly executed under Kentucky law and was self proven. It was properly admitted to probate by the Knott District Court. [Validity of execution is a jury Issue.]

CONCLUSIONS OF LAW

1. There are no material facts in dispute in this case [False Statement of fact made with scienter: actual fraud. Constructive fraud voids a judgment in Kentucky] and as a matter of law the Defendants are entitled to entry of Summary Judgment dismissing the Plaintiffs claims [False statement. Fraudulent assertion.]

JUDGMENT

Wherefore It Is Hereby Ordered, Adjudged and Decreed that the Defendants Motion for Summary Judgment should and the same is hereby Sustained. The Plaintiffs Cross-Motion for Summary Judgment should be and the same is hereby Overruled. The Plaintiffs Complaint is Dismissed with prejudice as to all claims that have been made or could have been made therein [Big favor]. The Defendants are entitled to recover their allowable costs from the Plaintiffs. All issues herein having been resolved [by fraud] this Judgment shall be final and appealable. [This is not a summary judgment.]

[This "summary judgment" is fraudulent and void. Actual knowledge of falsity can be presumed or inferred in Kentucky.

"Actual knowledge of the material fact concealed is unnecessary to be shown; it is sufficient if such facts be proven as warrant an inference of such knowledge. Wiekel v. Sterns, 142 Ky. 513, 134 S.W. 908, 34 L.R.A.(N.S.) 1035." Adkins v. Stewart, 159 Ky., 218, 166 S.W. 984 (1914).

"Fraudulent concealment implies knowledge of the fact concealed, which knowledge may be presumed or drawn from inference." Fields v. Cornett, 254 Ky. 35, 70 S.E. 2d 954. (1934). Cites Adkins v. Stewart, supra.]

In Witness Whereof I have set my hand as Judge of

this Court on this the 22nd day of February, 2006.

[s/] Kimberly Childers
Kim Childers
KNOTT CIRCUIT COURT

5769
Judgments Stewart Estate

3. Complaint Selections

[It is not possible to read the complaint and characterize it in good faith as an allegation that a civil rights injury was inflicted by (misconduct of) a judgment.]

THE UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

Civil Action No. 07-CV-23-GFVT

Michael L. Stewart, Ph.D., Plaintiff v.
Kimberly Childers, in her official capacity
As Circuit Judge, Circuit 36, Division 1,
Knott and MacGoffin Counties,
Commonwealth of Kentucky, Defendant

1. Preliminary Statement

1.1. This is a suit for declaratory relief pursuant to 42 U.S.C Section 1983 against Kimberly Childers, Circuit Judge, Knott and MacGoffin [sic] Counties, Kentucky (Circuit 36, Division 1). This complaint asserts that Kimberly Childers, acting in her official capacity, violated rights guaranteed to Michael Stewart by the Fourteenth Amendment of the Constitution of the United States of America as well as rights guaranteed by the Constitution of the Commonwealth of Kentucky.

1.2. This complaint asserts that Kimberly Childers entered a summary judgment in violation of

Michael Stewart's right to due process of law and equal protection of the law as these rights have been explicated by the Supreme Court of the United States of America. The Constitution of the Commonwealth of Kentucky also guarantees rights of due process of law and equal protection of the law (Sections 2, 3, and 14), as well as a right to trial by jury (Section 7).

1.3. Michael Stewart asks the court to declare that Kimberly Childers' judicial action violated his right to a "fair trial in a fair tribunal," his right to a "meaningful (evidentiary) hearing," his right to a hearing by a "disinterested" judge, and his right to a proceeding that presents the "appearance" of fairness, as well as rights guaranteed by the Bill of Rights of the Constitution of the Commonwealth of Kentucky. Michael Stewart further asserts that Kimberly Childers' conduct "shocks" the "'conscience" as well as the "sense of fair play." The quoted words and phrases are reproduced from familiar opinions issued by the Supreme Court of the United States of America.

1.4. A biased proceeding cannot be "cured" (made constitutional) by a subsequent fair proceeding. e.g., an appeal. An evidentiary hearing that is not "meaningful" cannot be "cured" ("constitutionalized") by a subsequent hearing that is "meaningful."

1.5. Michael Stewart is not required to exhaust local remedies before filing this complaint in Federal Court.

1.6. Kimberly Childers entered the summary judgment 22 February, 2006. Consequently, this filing is timely.

1.7 This complaint does not assert that the Kentucky law of summary judgment fails to satisfy constitutional requirements; nor does it ask a federal court to review a state court's interpretation of state law.

1.9. Kimberly Childers' entry of summary judgment was clearly and obviously contrary to Kentucky law. An unlawful summary judgment issued by a state judge may be correctly explained as a consequence of an incorrect interpretation of state law. Relief from such a judgment is pursued by filing an appeal in the state courts -- unless the judgment also constitutes a violation of a constitutional requirement, in which case it is void. (An appeal has been filed.) An unlawful summary judgment may sometimes be correctly explained, however, as a consequence of bias, bad faith, or interest. Such a judgment violates Fourteenth Amendment requirements for due process of law and (in some cases) equal protection of the law, and relief should be sought in a manner and venue suitable for such a cause of action. Nonetheless, it appears that attorneys and courts customarily treat unlawful summary judgments as "mere" voidable legal error, even when judicial misconduct appears obvious (despite KRS 26A.080). It seems to be necessary to pursue a civil rights complaint against a judge pro se. O.K.

1.10. This complaint asserts that Kimberly Childers' unlawful entry of summary judgment cannot be correctly characterized as a consequence of "mere" voidable [reversible] legal error of interpretation of Kentucky law or adequately characterized as a consequence of incompetence and/or negligence. The complaint also alleges that Kimberly Childers' official action violated Michael Stewart's constitutionally guaranteed rights, including the right to due process of law and the right to equal protection of the law. Whatever Kimberly Childers' interpretation of Kentucky law might have been, she did not provide or attempt to provide a "fair trial in a fair tribunal," a "meaningful" evidentiary hearing, and the "appearance" of fairness. Consequently, the summary judgment is void.

2. Jurisdiction and Venue [Omitted]

3. Parties. [Omitted]

4. Allegations and Statement of Facts [This section is composed of 51 items. I reproduce only the next to last.]

4.50. Kimberly Childers' action constituted a willful violation of rights guaranteed to Michael Stewart by the Constitutions of the United States of America and the Commonwealth of Kentucky. A judgment entered in violation of the requirements for due process of law is void.

5. Cause of Action

Michael Stewart asserts that Kimberly Childers acted in bad faith, denying him a "fair trial in a fair tribunal" and "a meaningful evidentiary hearing," Kimberly Childers' misconduct creates both the appearance and actuality of unfairness: it "shocks" the "conscience" as well as the "sense of fair play." Kimberly Childers' misconduct thus violated rights guaranteed to Michael Stewart by the Fourteenth Amendment of the Constitution of the United States of America as well as rights guaranteed by Sections 2, 3, 7, and 14 of the Constitution of the Commonwealth of Kentucky. Such misconduct by a state judge establishes a cause of action pursuant to 42 U.S.C. Section 1983.

[Emphasis added. It seems clear to me that this is a request for a declaration that Kimberly Childers misbehaved; it is not a request for a declaration that a judgment misbehaved. It would have been better if I had put quotes around "summary judgment." Fraud is perpetrated by the person who presents a fraudulent document, not by the document.]

6. Request for Relief

Wherefore,

Michael Stewart requests that this Court

1. declare that Kimberly Childers' *entry of summary judgment* violated his constitutionally guaranteed rights, including his rights to due process of law

and equal protection of the law, which are guaranteed by the Constitutions of the Unites States of America and the Commonwealth of Kentucky, as well as the *right to trial by jury*, which is guaranteed by the Constitution of the Commonwealth of Kentucky...

4. Rules and Statutes

4.1. Kentucky Constitution. Section Seven

Right of trial by jury. The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this constitution."

4.2. Kentucky Rules

4.2.1. CR 56.03. Motion and Proceedings Thereon

The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

4.2.2. CR 60.02 Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds:

(a) mistake, inadvertence, surprise or excusable neglect;

(b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence;

(d) fraud affecting the proceedings, other than perjury or falsified evidence;

(e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(f) any other reason of an extraordinary nature justifying relief.

The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

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(2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.

The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60

4.2.3. CR 60.03 Independent Action

Rule 60.02 shall not limit the power of any court to entertain an independent action to relieve a person from a judgment, order or proceeding on appropriate equitable grounds. Relief shall not be granted in an independent action if the ground of relief sought has been denied in a proceeding by motion under Rule 60.02, or would be barred because not brought in time under the provisions of that rule.

4.2.4. CR 60.04 When Appeal Pending

If a proceeding by motion or independent action is commenced under Rule 60.02 or 60.03 while an appeal is pending from the original judgment and prior to the time an opinion is rendered by the appellate court, the party commencing such proceeding shall promptly move the appellate court to abate the appeal until a final order is entered therein. When the trial court has entered such final order, the party who moved for abatement shall promptly file with the clerk of the appellate court a certified copy thereof.

5. Federal Rules

5.1. Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) In General.

Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 20 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) Effect of a Motion.

Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(b) How to Present Defenses.

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings.

After the pleadings are closed -- but early enough not to delay trial — a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings.

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion For a More Definite Statement.

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion To Strike.

The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join.

A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions.

Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived.

A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others.

Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction.

If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial.

If a party so moves, any defense listed in Rule 12(b)(1)-(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

5.2. Rule 60. Relief from Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final

judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing.

A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality.

The motion does not affect the judgmen t's finality or suspend its operation.

(d) Other Powers to Grant Relief.

This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished.

The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

6. Federal Statutes

6.1. Title 18 U.S.C. 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are

prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

6.2. Title 28 U.S.C. Section 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

6.3. Title 28 U.S.C. Section 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.
(b) For purposes of this section—
(1) the District of Columbia shall be considered to be a State; and
(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

6.4. Title 28 U.S.C. 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental

jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

6.5. Title 42 U.S.C. 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

6.6. Title 42. U.S.C. 1988. Proceedings in vindication of civil rights

(a) **Applicability of statutory and common law**
The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the

protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) **Attorney's fees**

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs,

including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) **Expert fees**
In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

7. Schedule

1. Complaint

2, Motion to Dismiss

3. Order of District Court (30 March, 2007)

4. Plaintiff's Response

5. Defendant's Response

6. Plaintiff's Response

7. Memorandum and Order of District Court (11 April, 2007)

8. Order of District Court (11 April, 2007)

9, Motion for New "Trial"

10. Order of District Court (19 April, 2007)

11. Appellant's Brief

12. Appellee's Brief

13. Appellant's Reply Brief

14. Order of the Court of Appeals (8 November, 2007)

15. Petition for En Banc Review

16. Denial of En Banc Review (19 February, 2008)

17. Mandate (27 February, 2008)